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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,785	12/30/2003	Alksander Wysocki	1387-5	8726
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HOFFMANN & BARON, LLP 6900 JERICO TURNPIKE SYOSSET, NY 11791				
			EXAMINER RABOVIANSKI, JIVKA A	
			ART UNIT 2623	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/748,785	Applicant(s) WYSOCKI, ALEKSANDER	
	Examiner Jivka Rabovianski	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/30/2003</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Plotnick, Michael A.; Plotnick (Plotnick hereinafter), US patent No: US 20020144262 A1.

Regarding claim 1, Plotnick teaches:

1. A system of transmission of television programs with a variable number of advertisements ([0091] – line 9 – “advertisements in programming they are referring to broadcast or network”) comprising:

a transmitter, transmitting a television signal including television programs ([0092] – line 1-2 – “VoD and PPV programming may be transmitted to a subscriber via a programming delivery network”), advertisements ([0091] line 5-7 – “there may be any number of advertisements (i.e., 3, 4, 5 advertisements during a commercial break), the advertisements may be inserted at any point in the programming”) and control signals ([0150] line 2-4 – “A communications module 804 handles the interactions with the server side ad management system 700, uploading and downloading data as required for system operation” see Fig. 8/804, 808 where these management system is on user side STB and performs maintaining process of incorporate targeted ads into television programs, including programs received in real-time.)

a receiving device (See Fig. 3 with associated devices) comprising
a signal receiving block (See Fig. 3/304 – tuner demodulator) ,
a mass storage block for recording the television signal ([0109] line 2-3 –“
Storage of programming is provided using a disk drive 336” see Fig. 3/336)and its
subsequent playback([0093] line 2-3 –“ the programming is recorded for future
playback”), and a processor block (see Fig. 3/320 – processor block) linked to the signal
receiving block (se Fig. 3/ see item 304) and the mass storage block (Fig. 3 and
connection between 320 (processor) –336 (disk drive storage block), the processor
block comprising a signal processing block for decoding and decompressing the
television signal (Fig. 6 item 604 and [0135] line 1-4 –“604 provides the functionality for
decoding cue messages. Cue messages are embedded in network video feeds. They
indicate the presence of advertisement opportunities ("avails") for the insertion of
advertisements”) and controlling a data stream transfer ([0154] line 7-8 – “Control data
related to ads (ad metadata) 1006 is received by the STB PVR from a downstream
control feed 1004” see Fig. 10/1004; downstream is connection to the processor 320
(Fig. 3) through 304 and 306) , a signal reception configuration block for receiving user's
commands ([0108] line 4-6 – “a remote control 311 works in conjunction with a remote
control demodulator 312 to allow remote control and programming of the PVR unit. A
processor 320 runs middleware” see Fig. 3/311, 312 and 320), a mass storage
controller for controlling data stream transfer between the processor block and the mass
storage block ([0109] line 6-8 – “The disk drive 336 is connected to the write buffer 310,
processor 320, and a read buffer 332 through a system bus 334. The read buffer 332

buffers video to accommodate disk access" See Fig. 3/336, 334, 320), a marker analysis block for analyzing markers broadcasted on a control channel (see Fig. 3/ item 308; [0107] line 11 – 14 – "A data tagging unit 308 adds metadata descriptors to video to be recorded. The metadata is used by the PVR to identify and characterize programs. A write buffer 310 buffers video to accommodate disk access.") and sending appropriate commands to the signal processing block and the mass storage block related to playback and recording of the television signal (See Fig. 3/308, 310 334, 336 and 320 this is the way that the control process is performed),

an Audio/Video block linked to the processor block and generating signal in format acceptable to a television set ([0109] line 9-11 – "An audio/video decoder 328 decodes digital video and audio, examples of which are MPEG video and MPEG/AC-3 audio").

Regarding claim 2, Plotnick teaches:

The system of transmission of television programs according to claim 1, wherein television programs are transmitted on primary channels ([0157] line 1 – "A downstream data feed 1020 delivers television program/content" see Fig. 10/1020), advertisements are transmitted on a channel with advertising units ([0154] line 5-6 – "Ads 1002 are received by the STB PVR from a downstream ad feed 1000" see Fig. 10/1000, 1002) and a signal controlling quantity of displayed advertisements is transmitted on a control channel ([0169] line 8-11 – "ad download instructions 1156 are transmitted to the ad server 716. The ad server 716 determines the availability of the ads (ad availability information 1158) identified in the download instructions 1156. The ad server 716

transmits available ads and ad metadata to set-top boxes” Instruction 1156 contains control signal of advertisement availability).

Regarding claim 9, Plotnick teaches:

The system of transmission of television programs according to claim 1, wherein television programs are transmitted on the primary channel together with the signal controlling the quantity of displayed advertisements ([0154] line 7-11 –“ Control data related to ads (ad metadata) 1006 is received by the STB PVR from a downstream control feed 1004. The control data 1006 includes descriptions of the ad content, target audience, encoding attributes, delivery instructions, and contract limitations. The control data can be created by a number of parties including the ad producer,” see Fig. 10/items 1004, 1010, 1016 and 1020, 1024, 10280 and advertisements are transmitted on the channel with advertising units (Fig. 10/1000).

Regarding claim 10, Plotnick teaches:

A method of transmission of television programs with a variable number of advertisements comprising:

transmitting television programs and advertisements on a primary channel;

transmitting a control signal causing displaying of advertisements;

displaying the advertisements based on the control signal. (See interpretation on claim 1 and also [[0194] line 3-6 – “The video stream 1210 from the video server 1200 includes avails 1400 (either blank avails or avails with default ads available for replacement with targeted ads). The PVR 1250 inserts the ads 1410 in the avails 1400 based on the ad queue 1420” Fig. 14 /1250, 1410 and 1420).

Regarding claim 11, Plotnick teaches:

The method of transmission of television programs according to claim 10, wherein the advertisements are displayed on a television screen after breaking a displayed program (See Fig. 14B/1250, 1410 and 1400 – “The PVR 1250 inserts the ads 1410 in the avails 1400 based on the ad queue 1420” where 1400 is available spot for advertisement) .

Regarding claim 12, Plotnick teaches:

The method of transmission of television programs according to claim 10, wherein the advertisements are displayed on a television screen at a settled place during displaying a program ([0205] line 9-11 – “The specific processing rules could identify exact frames, sets of frames, segments of video, and any complex combination thereof ...”[0205] line 16 - 18displaying different frames at the same time (i.e., one on top and one on bottom); using one frame as the background for video segments being run in front of the frame”).

Regarding claim 13, Plotnick teaches:

The method of transmission of television programs according to claim 10, wherein the advertisements are displayed following their activation by a remote control button (see Fig. 3/ item 311- remote control) .

Regarding claim 14, Plotnick teaches:

The method of transmission of television programs according to claim 10, wherein the advertisements are displayed after switching to a certain channel. ([0100] line 10-13 –“PVRs can also offer the ability to convert live program to a recording

("Convert to Recording" feature) the ability to return to live viewing ("Resume Live TV" feature) and the ability to clear the recording buffer upon a channel change";[0101] line 3-5 – "the digital PVR can support frame forward and frame backward features as well as digital slow motion, bookmark, and "go to time" features"- "Theses functions allow a user to skip forward exactly 30 seconds, effectively allowing the viewer to skip through commercials without seeing any portion of the advertisement or having to search for the return to programming")

Regarding claim 15, Plotnick teaches:

The method of transmission of television programs according to claim 10, wherein the advertisements to be displayed are transmitted on an advertisement channel, stored on a mass storage device (see Fig. 12B 1240 and 1250 -[0181] line 1-2 – "multiple alternative advertisements 1240 are delivered to the PVR 1250 and stored thereon.") and displayed after activation by a marker of the advertisements.(see Fig. 14 A 1200, 1210, 1400, 1410, 1420 – "The video stream 1210 from the video server 1200 includes avails 1400 (either blank avails or avails with default ads available for replacement with targeted ads). The PVR 1250 inserts the ads 1410 in the avails 1400 based on the ad queue 1420.") There is processing rules contained on the PVR that it has been preloaded at time of illustration of advertisements).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick.

Regarding claim 5, which recites, "advertisements are formed into advertising units has a code defining the products' main segment, a sub-segment code defining in detail category of the product in a given segment, a code of the manufacturer of the product, and an advertisement code identifying a given manufacturer's advertisement from a specified segment". Plotnick does not explicitly disclose the code is structured, but does suggest that the management system (0146] line 4-7 – "gives advertisers the ability to describe their advertisements in terms of target market demographics, required ad bandwidth, ad duration, and other ad specific parameters" and the management system matches the ads to the advertising opportunities that occur in the package of programming either delivered to subscribers in real time or stored on the subscriber's PVR hard disk drive. Also the management system tracks avails including duration and bandwidth of the availability, and uses a number of algorithms to determine if the ad can be placed in the availability. The management system includes market segmentation, geodemographic database management, viewing statistics collection, profile aggregation, ad server content and distribution management, content metadata management, STB software management, interface to traffic and billing systems, and

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support of the ad sales process. It is obvious to one skilled in the art that STB software has a code for recognition these advertisement' features.

Regarding claim 6, which recites, "a list of advertisements, which are to be played during an advertisement break, is broadcasted together with the marker of the advertisement R". Plotnick does not explicitly disclose that the advertisement is broadcasted together with the marker, but does suggest that ad queue has a pointer that points the location of the ads that are to be inserted ([0195] line 1-10 – "when the ad queue 1420 identifies the ad 1410 as the next ad to be inserted) or at the time of insertion"; Fig. 14 A-B). It is obvious to one skilled in the art that the existing options for ads inserting in Plotnick application benefits broadcasting ads with the marker of the advertisement.

Regarding claim 8, which recites, "at choosing the advertising unit to be displayed, it is checked if it is not a unit competitive to a previously displayed unit" Plotnick does not explicitly disclose it, but does suggest that that the PVR determines which subscriber is viewing program with advertisements and display the appropriate alternative ad and also the PVR determines which alternative advertisement to display based on individual subscriber. The alternative version of the advertisement (trick play advertisement) may be a marketing message that is version of the actual advertisement. It is obvious to one skilled in the art that choosing the advertising unit to be displayed is done in many different ways as Plotnick teaches.

4. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick as applied to claim 2 above, and further in view of Fujita, US 20050201721 A1;

Regarding claim 3, which recites, "a signal controlling quantity of displayed advertisements includes program markers P controlling record of a signal from a primary channel and advertisement markers R controlling playback of a recorded signal or of an advertisement". Plotnick does not explicitly disclose it, but Plotnick discloses [0163] line 1-4 – "When an ad insertion opportunity arises, the set-top box determines whether the current session profile matches any of the historical profiles in the profile database. If a match exists, the match will be used for selecting an appropriate advertisement"). Nevertheless, Fujita teaches that the controller ([0153] line 7-10 - "the programs and the CMs are all recorded on the magnetic tape, and at the time of reproduction the HDD unit buffers those data, and instantly removes (cut off, reproduces for quick seeing, fast forwards) the CMs on the basis of the CM information decided by the (see Fig.12) method")

Therefore, taking the combined teaching of Plotnick and Fujita as a whole, one skilled in the art would have found it obvious to modify Plotnick by utilizing the methodology as taught in Fujita where controlling quantity of advertisements and start time and end could be provided in different way as Fujita33 taught.

Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick as applied to claim 3 above, and further in view of Fujita, US 20050201721 A1;

Regarding claim 4, which recites, "the recorded signal is stopped, and the signal from the primary channel is played, when an interval between recording and playback of the recorded signal is shorter than a specified time". Plotnick does not explicitly disclose it, but Plotnick discloses [0128] line 5-6 "The PVR can substitute ads during live programming (play or recording of) or when pre-recorded programming is being played back." Nevertheless, Fujita teaches that ([0166] line 4-6 – "The time table describes the time-basis relation between the program and CM recorded on the magnetic tape 511." and Fig. 6 where CM stored in the CM history memory 83 and 81 detects the start point and end point of CM, completes the recording of the CM intervals described on the time table and predetermined periods (Tb) before and after the CM periods.)

Therefore, taking the combined teaching of Plotnick and Fujita as a whole, one skilled in the art would have found it obvious to modify Plotnick by utilizing the methodology as taught in Fujita where the recorded signal is stopped the signal of primary channel is controlled by clock.

Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick as applied to claim 3 above, and further in view of Fujita, US 20050201721 A1.

Regarding claim 7, which recites, "a currently played advertisement is played until the end, and after it is finished, playback of a recorded program is continued". Plotnick does not explicitly disclose it, but Plotnick discloses advertisements and an ad queue are stored on the PVR and the video stream from the video server includes available spot (either blank avails or avails with default ads available for replacement

with targeted ads). Nevertheless, Fujita teaches that after the currently ad is played Fig. 6 /814, [0161] line – “The CM interval detector 814 monitors the broadcast time interval (for example, an interval of 15 seconds) of the signal indicating the start point or end point of CM produced from the CM discriminator, and decides that the output signal is the signal of having detected the start point or end point of CM when the time interval of the signal satisfies the broadcast time interval and a sequence of a plurality of those intervals.)

Therefore, taking the combined teaching of Plotnick and Fujita as a whole, one skilled in the art would have found it obvious to modify Plotnick by utilizing the methodology as taught in Fujita where the presenting the sequence of advertisements and playback program was shown with many ways.

Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick as applied to claim 10 above, and further in view of Fujita, US 20050201721 A1.

Regarding claim 16, which recites, “wherein the control signal, controlling quantity of displayed advertisements, includes program markers P and advertisement markers R causing a break in displaying the program signal from the primary channel and activating displaying the advertisements, markers activating background recording of a signal from the primary channel on a data carrier, markers activating playback of a signal from the primary channel, markers activating playback of a signal from the data carrier and markers stopping the background recording of the signal from the primary

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channel on the data carrier". Plotnick does not explicitly disclose it, but Fujita discloses replace or supplements the fast forwarding advertisements with alternative advertisements. Nevertheless, Fujita teaches ([0153] line 8-10 – "the time of reproduction the HDD unit buffers those data, and instantly removes (cut off, reproduces for quick seeing, fast forwards) the CMs on the basis of the CM" and Fig. 11 and 12).

Therefore, taking the combined teaching of Plotnick and Fujita as a whole, one skilled in the art would have found it obvious to modify Plotnick by utilizing the methodology as taught in Fujita utilizing transmission of television programs with a variable of advertisements with controlling their numbers

Examiner's Note

The referenced citations made in the rejection(s) above are intended to exemplify areas in the prior art document(s) in which the examiner believed are the most relevant to the claimed subject matter. However, it is incumbent upon the applicant to analyze the prior art document(s) in its/their entirety since other areas of the document(s) may be relied upon at a later time to substantiate examiner's rationale of record. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). However, "the prior art's mere disclosure of more than one alternative does not

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constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

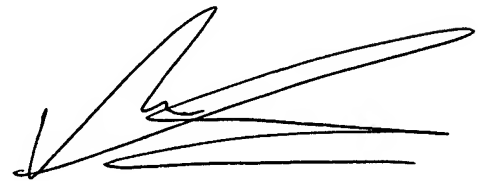
Contact

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jivka Rabovianski whose telephone number is (571) 270-1845. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 270-1845. Customer Service can be reached at (571) 272-2600. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jivka Rabovianski/



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